

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DANIEL HILL,
ADC # 148493

PLAINTIFF

v.

5:14CV00239-JLH-JJV

O. IKO; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial

evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

On October 28, 2014, Defendant Iko filed a Motion to Compel (Doc. No. 29) and asserted that Plaintiff had failed to provide timely responses to her discovery requests. The Court directed Plaintiff to respond to the relevant discovery requests on October 29, 2014, and provided him with fourteen (14) days to do so. (Doc. No. 33). Now, Defendants¹ have filed a Motion for Sanctions (“Motion”) (Doc. No. 42) and state that Plaintiff has not complied with the Court’s Order. Accordingly, they seek dismissal of this lawsuit and the reasonable costs incurred in filing their Motion. (*Id.* at 2).

The Court specifically warned Plaintiff that the failure to comply with its Order would result in a recommendation that this case be dismissed without prejudice. (Doc. No. 33 at 2). He has not complied, and the Court recommends dismissal of this action without prejudice.² The Court declines, however, to award Defendants their costs and fees incurred in preparing their Motion.

IT IS, THEREFORE, RECOMMENDED THAT:

1. Defendants’ Motion for Sanctions (Doc. No. 42) be GRANTED in part and DENIED

¹Summons for Defendant Deborah York were returned executed on October 29, 2014. (Doc. No. 32). Defendants contend that Plaintiff’s failure to comply with the Court’s Order also entitles her to dismissal.

²Federal Rule of Civil Procedure 37(b)(2)(A)(v) provides for the dismissal of an action where a party fails to obey an order to provide or permit discovery.

in part.

2. This action be DISMISSED without prejudice.

3. Defendants' requests for fees and costs incurred in preparing their Motion for Sanctions be DENIED.

4. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations would not be taken in good faith.

Dated this 17th day of December, 2014.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE